

**VETERINARY EXAMINING BOARD
MINUTES
NOVEMBER 11, 2009**

PRESENT: Marthina Greer, DVM; JoAnn Kleman, CVT; Donald Peterson, DVM;
Robert R. Spencer, DVM; Theresa Waage; and Joan Wywialowski

EXCUSED: Wesley Elford, DVM; William Rice, DVM

STAFF PRESENT: Jeff Scanlan, Bureau Director; Colleen Baird, Legal Counsel;
Kimberly Wood, Bureau Assistant; and other DRL Staff

GUESTS: Laurie Angell, CVT, Wisconsin Veterinary Technician Association
(WVTA); Kim Brown Pokorny and Kelly McDowell, Wisconsin
Veterinary Medical Association (WVMA); Yvonne Bellay,
Department of Agriculture Trade and Consumer Protection (DATCP)

CALL TO ORDER

Robert Spencer, Chair, called the meeting to order at 9:36 a.m. A quorum of six (6) members was present.

APPROVAL OF AGENDA

Amendments to Agenda:

- After Item “O” (closed session) ADD: Consideration of Proposed Administrative Warnings received in the Bureau after Mailing of the Agenda:
 - 06 VET 026
 - 07 VET 009

MOTION: JoAnn Kleman moved, seconded by Donald Peterson, to approve the agenda of November 11, 2009 as amended. Motion carried unanimously.

APPROVAL OF MINUTES OF AUGUST 6, 2009

MOTION: JoAnn Kleman moved, seconded by Joan Wywialowski, to approve the minutes of August 5, 2009 as published. Motion carried unanimously.

ELECTION OF OFFICERS FOR 2010

NOMINATION: Joan Wywialowski nominated the 2010 slate of officers to continue in 2010. Nomination carried by unanimous vote.

Robert Spencer, Chair, called three (3) times for other nominations.

2010 ELECTION RESULTS	
Board Chair	Robert Spencer
Vice Chair	Marthina Greer
Secretary	JoAnn Kleman

BOARD APPOINTMENTS

Robert Spencer appointed Theresa Waage to the screening panel in place of Joan Wywialowski, effective as of December 2009. The Board deferred its remaining appointments until its 2010 first meeting in 2010.

Dr. Spencer made the following appointments to the screening panel:

- Jo Ann Kleman
- Wesley Elford
- Marthina Greer
- Theresa Waage (effective as of December 2009)

ADMINISTRATIVE REPORT

Jeff Scanlan, Bureau Director, and Colleen Baird, Legal Counsel, introduced themselves to the Board and explained that a scheduling conflict prevented Tom Ryan, Bureau Director, and Ruby Jefferson-Moore, Legal Counsel, from staffing today's meeting.

Jeff Scanlan announced the retirement of the following staff members effective on November 20, 2009:

- Ruby Jefferson-Moore, Legal Counsel – Division of Board Services
- Peggy Wichmann, Legal Counsel – Division of Board Services
- Joel Garb, Paralegal – Division of Board Services

Ruby Jefferson-Moore appeared before the Board to extend her farewell wishes. The Board expressed its gratitude for the years of service that Ruby Jefferson-Moore provided.

Jeff Scanlan notified the Board that the Division of Board Services has hired Karen Rude-Evans, formally with the Division of Professional Credentialing, as a Bureau Assistant.

The Board received information regarding Departmental reorganization resulting from a new bureau. The Medical Examining Board (MEB) bureau handles the regulation of the MEB and its Affiliated Boards, Committees, and Councils. The Board discussed the transition of existing staff and the creation of new positions created within the Division of Enforcement, the Division of Professional Credentialing, and the Division of Board Services.

Pam Stach, DOE Attorney, addressed the Board advising them of her transition to the Medical Examining Board Bureau. Attorney Stach indicated that she will continue to attend the Veterinary Examining Board's Informed Consent Committee meetings.

Re-Appointment of Robert Spencer

The Board noted the reappointment of Robert Spencer.

2010 Board Meeting Dates – Review for Approval

The Board reviewed its proposed 2010 meeting dates:

- February 10, 2010
- May 26, 2010
- August 4, 2010
- October 20, 2010

MOTION: Joan Wywialowski moved, seconded by Theresa Waage, to approve the proposed 2010 meeting dates. Motion carried unanimously.

Practice Question Procedure

Noted.

18 Month Commitment – Bruce Cameron and Lydia Thompson, Department of Regulation and Licensing Division of Enforcement

Lydia Thompson, Assistant to the Special Assistant, appeared before the Board to provide a PowerPoint presentation regarding the Department's commitment to close incoming cases within 18 months from the time when a case is opened. Bruce Cameron, Special Assistant to the Secretary, was not available to present the PowerPoint presentation. Upon the conclusion of the presentation, the Board's membership received a paper copy of the PowerPoint presentation viewed at today's meeting. The Board provided feedback on this initiative.

**PRESENTATION OF PROPOSED STIPULATIONS,
FINAL DECISIONS AND ORDERS**

MEGHAN HESSLER, DVM

Attorney James Polewski presented the Proposed Stipulation, Final Decision and Order in the matter of Richard Meghan Hessler, DVM.

KENT FRYDENLUND, DVM

Attorney James Polewski presented the Proposed Stipulation, Final Decision and Order in the matter of Kent Frydenlund, DVM.

ELIZABETH NASAL, DVM

Attorney James Polewski presented the Proposed Stipulation, Final Decision and Order in the matter of Elizabeth Nasal, DVM.

**PRESENTATION OF PROPOSED STIPULATIONS RECEIVED IN THE BUREAU
AFTER PREPARATION OF AGENDA**

None.

**PRESENTATION OF PROPOSED DECISIONS RECEIVED IN THE BUREAU AFTER
PREPARATION OF THE AGENDA**

None.

**PRESENTATION OF PROPOSED REMEDIAL EDUCATION CASES RECEIVED IN
THE BUREAU AFTER PREPARATION OF THE AGENDA**

None.

**PRESENTATION OF PETITIONS FOR RE-HEARING RECEIVED IN THE BUREAU
AFTER PREPARATION OF THE AGENDA**

None.

SPEAKING ENGAGEMENT AND TRAVEL REQUESTS RECEIVED IN THE BUREAU AFTER MAILING OF THE AGENDA

None.

LEGISLATIVE LIAISON REPORT

JoAnn Kleman noted that a number of the Board's legislative initiatives have been pending without action. The Board requested a review of its outstanding legislative projects at its next meeting. JoAnn Kleman will provide an outline of outstanding information to the Board for discussion. Jeff Scanlan suggested that the Board review its outstanding items for inclusion in a legislative request. The Board should then attempt to obtain a legislative sponsor so to achieve introduction.

2010 Assembly Bill 417, Relating to Requirements for Initial Licensure as a Veterinarian

Kelly McDowell, Legislative Council, Wisconsin Veterinary Medicine Association (WVMA), updated the Board regarding the status of AB 417. Ms. McDowell indicated that this bill passed Assembly and is currently before the Senate Oversight Committee. Kelly McDowell anticipated that AB 417 should pass through the senate when legislative sessions reconvene in January 2010.

2010 Assembly Bill 250, Relating to Regulation of Persons who Sell Dogs or Operates Animal Shelters or Animal Control Facilities

Yvonne Bellay, Department of Agriculture, Trade and Consumer Protection (DATCP), informed the Board that AB 250 has passed and is waiting for signature by the governor. This bill establishes regulations for persons who sell dogs, operates animal shelters and animal control facilities. The Board received information relating to the formation of an advisory committee to implement a licensing program. The licensure program must be initiated within 18 months of the time the governor signs this legislation. Discussion of the funding for this project and interim licensure provisions ensued.

ADMINISTRATIVE RULES SUMMARY REPORT

Noted.

RULES REVIEW COMMITTEE REPORT

None.

PRACTICE QUESTIONS

Wis. Stat. §. 453.02 (6), Regarding Compensation and the Practice of Veterinary Medicine – Marthina Greer, DVM – Lomira, WI

Marthina Greer posed a question regarding the definition of “practice of veterinary medicine” listed in statute § 453.02(6) Wis. Stats. Dr. Greer outlined concerns with this definition as it suggests that compensation for performing veterinary medical services constitutes the “practice of veterinary medicine”. Dr. Greer asked if a license is required for an individual to perform veterinary service without receiving compensation. Pamela Stach, DOE Prosecutor, advised the Board that in her opinion complaints regarding an allegation of unlicensed practice of veterinary medicine by an individual that is not receiving compensation are outside of the Board’s jurisdiction.

Pamela Stach addressed the Board regarding this definition and its history. Ms. Stach indicated that the Board had previously sought to amend this statutory definition to indicate that licensure is required to provide veterinary medicine regardless of compensation. Legislation was pursued, however this proposed amendment died in the legislative process.

JoAnn Kleman noted that the issue of Board review of unlicensed practice was a topic of interest at the American Association of Veterinary State Boards Annual Meeting she attended in September. The Board briefly discussed unlicensed practice and requested that it receive information regarding its ability to review all complaints pertaining to veterinary practice, including those involving unlicensed practice. The Board will discuss this matter at its next meeting.

Additionally, the Board briefly discussed the licensure requirements for conducting animal pregnancy tests and indicated the need to discuss this topic at its next meeting.

Compounded Medications Prescribed by Veterinarians in Wisconsin – Gloria Harrison, DVM – Fredonia, WI

The Board reviewed questions submitted by Gloria Harrison, DVM, relating to the labeling and compounding of medications prescribed by Wisconsin-licensed veterinarians and concerning business billing practices.

1. Can the prescribing veterinarian put a clinic label over, or next to, the compounding pharmacy’s label with instructions for administering? Does the phone number of the compounding pharmacy have to be displayed on the label?

Pamela Stach offered to the Board that in her legal opinion § 453.06 (a)(2) Wis. Stats. outlines the specific requirements regarding compounded medication. This issue will be brought back to the Board’s next meeting if an answer cannot be identified prior to its next meeting.

2. Can we “mark-up” a compounded medication or only bill the client our cost of the medication when we order it for them?

The Board stated that it cannot regulate costs associated with services provided by a licensee or a clinic and that this is a business issue. This question was identified as being outside of the Board's jurisdiction and requested the redirection of Dr. Harrison to the appropriate source of information.

3. Can we charge a prescription fee/medical records fee when we call in or order a prescription for a compounded medication?

The Board reiterated that this issue is outside of Board's jurisdiction and again requested the redirection of Dr. Harrison to a more appropriate source.

Unlicensed CVT/RVT Administering Rabies Vaccinations in Wisconsin – Alana Ripley – E-mail request

The Board reviewed a question posed by Alana Ripley, CVT/RVT, regarding her ability to administer a rabies vaccination, without a Wisconsin license, under the direct supervision of a Wisconsin licensed veterinarian.

The Board indicated that the law requires Ms. Ripley to possess a current Wisconsin veterinary technician license to administer a rabies vaccination in Wisconsin.

The Board noted frustrations voiced by Ms. Ripley relating to difficulties she has experienced in the Wisconsin veterinary technician licensure process. The Board requested follow-up with Ms. Ripley by the appropriate Department staff.

**PRACTICE QUESTIONS
PAMELA STACH, DIVISION OF ENFORCEMENT**

Pamela Stach advised the Board that she recently presented to the Wisconsin Veterinary Medical Association (WVMA), in Bloomer, which resulted in her receiving a number of legal questions relating to veterinary practice. Pamela Stach informed the Board that she does not typically respond to practice questions and noted that she provided this service as Ruby Jefferson-Moore was unavailable due to meeting conflicts and her pending retirement. Pamela Stach advised the Board to confer with its new legal counsel, once assigned, regarding practice issues. The practice questions reviewed, and answers provided by the Board, are available below.

Kim Brown-Porkorny, WVMA, provided comments and provided clarification to the Board regarding the practice questions submitted by the WVMA.

During the review of this agenda topic, the Board noted that an issue relating to the current regulatory environment of Humane Societies was not included for review on today's agenda. The Board requested that discussion of this issue occur at the February 2010 meeting and indicated that Dr. Yvonne Bellay, Department of Agriculture, Trade and Consumer Protection (DATCP), should receive an invitation to participate in this discussion.

The Board went on to discuss means by which to communicate practice question and answers on the Department's website. The Board was informed about the redesign of the Department's website and the new approach to scope of practice questions on this site.

The Board also discussed who would be charged with the responsibility to respond to the practice questions reviewed at today's meeting and until the Board's new counsel has been hired. The Board asked that Tom Ryan respond to these questions as directed by the Board at today's meeting.

Is an Informed Consent Discussion Necessary Prior to a Rabies Vaccination at Rabies Clinics?

The Board reviewed a question received from Robert Bohacek, DVM, relating to the necessity to provide informed consent when providing rabies vaccinations as part of a free vaccination clinic in conjunction with a public health office. The Board will discuss the standard in the profession for providing vaccinations and the related informed consent rule requirements at its February meeting. In the interim, the Board advised that a licensee must comply with current law, which requires informed consent discussion with a pet owner prior to receipt of a rabies vaccination.

Is an Informed Consent Discussion Necessary on Vaccination Boosters?

The Board reviewed another question posed by Robert Bohacek, DVM, and the response offered by Pamela Stach. The Board agreed with the proposed response drafted by Pamela Stach as outlined below.

If you have had an informed consent discussion regarding the risks and benefits of the vaccine initially and the client is an ongoing client of yours who participated in that discussion, then repeating the information in detail is not necessary. However, you should always provide an opportunity for the client to ask questions and speak with the veterinarian particularly if the pet's circumstances, medical history or symptoms have changed. An examination might be required or perhaps the client has obtained some information about vaccinations which they would like to further discuss. It really is a case-by-case basis but you would be well served to provide (and document) the opportunity to speak to a veterinarian to the client.

Is an Informed Consent Discussion Necessary for Diagnosis of a Stool Sample?

The Board reviewed the final question posed by Dr. Robert Bohacek relating to informed consent requirements connected to the diagnosis of a stool sample and Pamela Stach's response to this inquiry. Again, the Board agreed with the response proposed by Pamela Stach, provided below.

The diagnosis and prescribing of treatment is a non-delegatable duty. In order to prescribe treatment, including drugs, you need to have a discussion with the client regarding the treatment options available and the risks and benefits of those options. The technician cannot do this. If you had the discussion regarding the potential diagnoses with the client when the animal was brought in and they later dropped off a stool sample then the original discussion would suffice.

If you have not had that discussion, or they never brought the animal in for examination but simply dropped off the stool sample, then you should call the client.

The requirement that options for diagnosis and treatment and the risks and benefits of those options has always been part of the practice of a veterinarian. The fact that there is now a specific rule requiring this is a codification of that existing requirement.

If you Advertise Emergency Services Must you See all Patients Brought to the Clinic?

The Board reviewed a scope of practice question submitted to the Wisconsin Veterinary Medical Association (WVMA) by a Wisconsin veterinary clinic. This correspondence indicated that the clinic has previously advertised emergency services but did not indicate that these services are client specific and has since changed their advertisements. However, the clinic inquired as to whether its outgoing voicemail message is a form of advertisement.

The Board indicated that the clinic's outgoing voicemail message should indicate that if they wish to restrict services to existing clients their voicemail should clearly indicate that emergency services are limited to existing clients only. The Board noted that a clinic that advertises that it provides emergency services must be staffed and able to provide care for all presented illnesses or have the ability to stabilize a patient until necessary treatment is available.

If a Client Uses Our Clinic for Animal Health, but Then Takes Their Prescription to Another Clinic (on a regular basis) to be Filled (because it is cheaper), Should this Clinic Have a Pharmacy License?

The Board reviewed and discussed the first of two questions submitted by the WVMA relating to filling and transfer of prescriptions.

The answer, as indicated by the Board, is that a pharmacy license would not be required of a clinic, with a veterinarian on staff, to fill a prescription issued by a veterinarian at a separate clinic. Pamela Stach cited § 453.02(6m) Wis. Stats. which specifically allows the filling of a prescription.

If We Run Out of a Drug, Can We Send a Client to Another Clinic (only one time) to Get that Prescription Without that Clinic Needing a Pharmacy License? They are Just Helping Out in this One Case, One Time.

The Board reviewed and discussed the second of two questions submitted by the WVMA relating to filling and transfer of prescriptions.

The Board indicated that a clinic could provide a prescription to a client to be filled at another clinic. Pamela Stach cited § 453.02 (6m) Wis. Stats. which supports the answer provided by the Board.

**PRACTICE QUESTIONS RECEIVED IN THE BUREAU
AFTER PREPARATION OF THE AGENDA**

None.

**CONTINUING EDUCATION ISSUES RECEIVED IN THE BUREAU
AFTER PREPARATION OF THE AGENDA**

None.

**APPLICATION ISSUES RECEIVED IN THE BUREAU
AFTER PREPARATION OF THE AGENDA**

None.

**EXAMINATION ISSUES RECEIVED IN THE BUREAU
AFTER PREPARATION OF THE AGENDA**

None.

INFORMATIONAL ITEMS

Noted.

**APPEARANCES FROM REQUESTS RECEIVED OR RENEWED
AFTER PREPARATION OF THE AGENDA**

None.

PUBLIC COMMENTS

Laurie Angell, Wisconsin Veterinary Technician Association (WVTA), introduced herself to the Board as the new Chairperson of the WVTA Legislative Committee and provided comments to the Board.

CLOSED SESSION

MOTION: Donald Peterson moved, seconded by JoAnn Kleman, to convene to closed session to deliberate on cases following hearing (Wis. Stat. 19.85(1) (a)), to consider licensure or discipline (Wis. Stat. § 19.85(1) (b)), to consider individual histories or disciplinary data (Wis. Stat. § 19.85(1) (f)), and to confer with legal counsel (Wis. Stat. § 19.85(1) (g)). Motion carried by a roll call vote: Marthina Greer-yes; JoAnn Kleman-yes; Donald Peterson-yes; Robert R. Spencer-yes; Theresa Waage-yes; Joan Wywialowski-yes.

The Board convened into Closed Session at 1:01 p.m.

RECONVENE INTO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

MOTION: Marthina Greer moved, seconded by Donald Peterson, to reconvene into open session. Motion carried unanimously.

The Board reconvened into Open session at 1:33 p.m.

DELIBERATION OF PROPOSED STIPULATIONS, FINAL DECISIONS AND ORDERS

MEGHAN HESSLER, DVM

MOTION: Donald Peterson moved, seconded by Marthina Greer, to adopt the Findings of Fact, Conclusions of Law, Stipulation and Order in the matter of **Meghan Hessler, DVM (06 VET 058)**. Motion carried unanimously.

KENT FRYDENLUND, DVM

MOTION: Donald Peterson moved, seconded by Theresa Waage, to adopt the Findings of Fact, Conclusions of Law, Stipulation and Order in the matter of **Kent Frydenlund, DVM (07 VET 015)**. Motion carried unanimously.

ELIZABETH NASAL, DVM

MOTION: Joan Wywialowski moved, seconded by Marthina Greer, to adopt the Findings of Fact, Conclusions of Law, Stipulation and Order in the matter of **Elizabeth Nasal, DVM (06 VET 021)**. Motion carried unanimously.

**MONITORING REPORTS RECEIVED IN THE BUREAU
AFTER MAILING THE AGENDA**

None.

**CONSIDERATION OF REMEDIAL EDUCATION CASES
RECEIVED IN THE BUREAU AFTER MAILING OF THE AGENDA**

None.

**DELIBERATION OF PROPOSED STIPULATIONS RECEIVED IN THE BUREAU
AFTER MAILING OF AGENDA**

None.

**DELIBERATION OF PROPOSED DECISIONS RECEIVED IN THE BUREAU
AFTER MAILING OF THE AGENDA**

None.

**CONSIDERATION OF PROPOSED ADMINISTRATIVE WARNINGS
RECEIVED IN THE BUREAU AFTER MAILING OF AGENDA**

06 VET 026

MOTION: Marthina Greer moved, seconded by Theresa Waage, to issue an administrative warning in the matter of case number **06 VET 026**. Motion carried. Opposed – one (1)

07 VET 009

MOTION: JoAnn Kleman moved, seconded by Joan Wywialowski, to issue an administrative warning in the matter of case number **07 VET 009**. Motion carried unanimously.

**DELIBERATION OF COMPLAINTS RECEIVED IN THE BUREAU
AFTER MAILING OF THE AGENDA**

None.

**DELIBERATION OF PETITIONS FOR RE-HEARING RECEIVED IN THE BUREAU
AFTER MAILING OF THE AGENDA**

None.

CASE STATUS REPORTS

Noted.

CASE CLOSINGS

07 VET 004

MOTION: Joan Wywialowski moved, seconded by Donald Peterson, to close case **07 VET 004** for prosecutorial discretion (P2). Motion carried unanimously.

09 VET 033

MOTION: JoAnn Kleman moved, seconded by Theresa Waage, to close case **09 VET 033** for no violation. Motion carried unanimously.

09 VET 031

MOTION: JoAnn Kleman moved, seconded by Donald Peterson, to close case **09 VET 031** for prosecutorial discretion (P7). Motion carried unanimously.

09 VET 036

MOTION: Joan Wywialowski moved, seconded by Donald Peterson, to close case **09 VET 036** for prosecutorial discretion (P2). Motion carried unanimously.

09 VET 045

MOTION: Joan Wywialowski moved, seconded by Donald Peterson, to close case **09 VET 045** for prosecutorial discretion (P2). Motion carried unanimously.

06 VET 019

MOTION: Marthina Greer moved, seconded by JoAnn Kleman, to close case **06 VET 019** for insufficient evidence. Motion carried unanimously.

03 VET 014

MOTION: JoAnn Kleman moved, seconded by Marthina Greer, to close case **03 VET 014** for prosecutorial discretion (P2). Motion carried unanimously.

CONSULTING WITH LEGAL COUNSEL

Colleen Baird, Legal Counsel, was available to the Board for consultation during closed session deliberation.

**APPLICATION ISSUES RECEIVED IN THE BUREAU
AFTER MAILING OF THE AGENDA**

None.

**EXAMINATION ISSUES RECEIVED IN THE BUREAU
AFTER MAILING OF THE AGENDA**

None.

**APPEARANCES FROM REQUESTS RECEIVED OR RENEWED
AFTER MAILING OF THE AGENDA**

None.

ADJOURNMENT

MOTION: Donald Peterson moved, seconded by JoAnn Kleman, to adjourn. Motion carried unanimously.

The meeting adjourned at 1:45 p.m.